IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1534

MOBILE HOME CITY OF CHATTANOOGA, INC.; MOBILE HOME CITY OF EAST RIDGE, INC.; NATIONAL DISCOUNT HOMES, INC.; A-1 MOBILE HOME SALES, INC.; ABC MOBILE HOMES; AMERICAN STYLE MOBILE HOMES, INC.; CRESTVIEW MOBILE HOMES; CUT-RATE MOBILE HOME SALES CO.; EASY LIVING MOBILE HOMES, INC.; GRAY SOUTHERN MOBILE HOMES; KING'S MOBILE HOMES; LUXURY LIVING MOBILE HOMES; RED BANK MOBILE HOMES; STATE LINE MOBILE HOMES, INC.; UNITED MOBILE HOME BROKERS, INC., and CARL H. ADAMS, II,

Petitioners,

vs.

HAMILTON COUNTY, TENNESSEE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE AT KNOXVILLE

J. TROY WOLFE, JR. and
HERBERT A. THORNBURY
1700 Commerce Union Tower
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5-2-77-60

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SUPREME COURT OF THE UNITED STATES

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Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Tennessee
At Knoxville

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioners, Mobile Home City of Chattanooga, Inc., et al, respectfully pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Tennessee at Knoxville filed February 7, 1977, denying Petitioners' Petition for Certiorari and the judgment of the Court of Appeals of Tennessee, Eastern Section, filed October 22, 1976.

OPINIONS BELOW

No written opinions have been reported to the official reports in this case. The order of the Chancery Court of Hamilton County, Tennessee, the Opinion of the Court of Appeals of Tennessee, Eastern Section, and the Order of the Supreme Court of Tennessee, at Knoxville are reprinted in the Appendix to this Petition.

JURISDICTION

The order of the Supreme Court of Tennessee at Knoxville was entered on February 7, 1977. Jurisdiction of this Court is invoked under 28 U.S.C. 1257.

QUESTION PRESENTED

Whether the five acre provision of the *Resolution* in question is unconstitutional as violative of the Equal Protection Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

UNITED STATES STATUTES INVOLVED

Articles in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress and ratified by the legislatures of the several states pursuant to the Fifth Article of the original Constitution.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE [XIV]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE FACTS

This is an action to declare invalid a five acre provision in a ***Resolution to Establish a Single Lots Mobile Home District and to Amend the Hamilton County, Tennessee Zoning Regulations to Exclude Mobile Homes on Individual Lots and All Other Zoning Districts*** which was passed on May 21, 1975, by the County Council of Hamilton County, Tennessee.

Petitioners are mobile home dealers within Hamilton County, Tennessee. One Petitioner is a landowner within Hamilton County, Tennessee.

Petitioners take issue to Section 1403.6 of the *Resolution* stating that: "The minimum District size for any Single Lot Mobile Home District is five (5) acres." No other single-family dwelling residential district requires more than a 100 X 100 foot lot on which to place a single family dwelling unit. The effect is to virtually exclude placing a single mobile home on a lot less than five (5) acres.

In Petitioners' Complaint which was filed on May 22, 1975, they raised in their *First Claim* which is as follows:

> "The *Resolution* is unconstitutional in that it violates the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution by creating an arbitrary and invidious class distinction of mobile home districts versus all other types of residential districts and places a more onerous burden on lot owners within the separate residential classifications."

The Chancery Court of Hamilton County, Tennessee, in its Memorandum Opinion held the *Resolution* "under attack to be constitutional" and dismissed Petitioners' Complaint.

This *First Claim* was the first assignment of error in Petitioners' Assignment of Error before the Court of Appeals of Tennessee at Knoxville. The Court of Appeals of Tennessee, Eastern Section, overruled Petitioners' Assignment of Error and affirmed the trial court's decision.

Petitioners reduced its Assignment of Error to the Tennessee Supreme Court to one issue:

> The five acre provision of the *Resolution is unconstitutional* in that it violates the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

The Supreme Court of Tennessee denied the Petition for Certiorari on February 7, 1977.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING ZONING ORDINANCES WHICH IN THEIR APPLICATION VIRTUALLY EXCLUDE THE CLASS OF MOBILE HOME OWNERS.

Section 1403.6 of the *Resolution* in question states that: "The minimum District size for any Single Lot Mobile Home District is five (5) acres." No other district requires more than 10,000 square feet on which to place a single family dwelling unit.

There are fourteen (14) zoning districts within Hamilton County, Tennessee:

Agricultural District
Urban Residential District
Rural Residential District
Apartment-Townhouse District
Mobile Home Park District
Tourist Court and Motel District
Local Business District
General Business District
Wholesale and Light Industrial District
Industrial District
V-1 Valley Zone District
R-1 Residential District
Office District
Single Lots Mobile Home District

Of the five (5) residential districts which include Urban, Rural, Apartment-Townhouse, R-1 Residential and Single Lots Mobile Home, only the Single Lots Mobile Home District has the minimum area requirement of five (5) acres. The four residential districts which do not require this minimum five (5) acres to form the district require only 10,000 square feet for one-family dwellings. Mobile homes are excluded from these four districts. Petitioners feel that the classification as to the class of mobile homes requiring a five (5) acre district is an unreasonable exercise of the police power of the State.

Within the five (5) acre Single Lots Mobile Home District, other types of conventional housing may be placed on 10,000 square foot lots. On each 10,000 square foot lot, a mobile home could be placed. In no other district can a mobile home be placed other than the Mobile Home

Park District. Respondent admitted at trial that the five (5) acre provision was an arbitrary figure.

In order to have one's property rezoned into a Single Lot Mobile Home District, one would have to get a Petition signed by the adjoining lot owners. No Petition may be heard by the Planning Commission without the owners of fifty (50%) percent or more of the frontage within a given area concurring. Petitioners submit that the subject *Resolution* is attempting to delegate the police power of the State to adjoining property owners by requiring a Petition to establish a Single Lots Mobile Home District to be signed by fifty (50%) percent or more of those with frontage within a given area in violation of the Equal Protection Clause of the Fifth Amendment to the United States Constitution.

Village of Euclid vs. Ambler Realty Co., 272 U.S. 365 is frequently cited on the point in issue here:

> "The ordinance now under review, and all similar laws and regulations must find their justification in some aspect of the police power, asserted for public welfare. The line which in this field separates the legitimate from the illegitimate assumption of power is not capable of precise delineation. It varies with circumstances and conditions. . . ."
>
> * * *
>
> "That municipalities have power to regulate the heights of buildings, area of occupation, strengths, of building materials, modes of construction and of use, in the interest of public safety, health, morals, and welfare; propositions long since established; that a rational use of power may be made by dividing a municipality into districts or zones, and varying

their requirements of the district is, of course, equally well established. We believe that, however, to be the law, these powers must be reasonably exercised and that a municipality may not under the guise of the police power, arbitrarily divert property, from its appropriate and most economical uses, or diminish its value by imposing restrictions which have no other basis than the momentary taste of the public authorities." 272 U.S. at 373, 374.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

J. TROY WOLFE, JR. and
HERBERT A. THORNBURY
1700 Commerce Union Tower
Chattanooga, TN. 37450

Attorneys for Petitioners

APPENDIX A

IN THE CHANCERY COURT, PART 2
FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA

MOBILE HOME CITY OF CHATTANOOGA, INC., et al	*	
vs.	*	No. 49346
HAMILTON COUNTY, TENNESSEE	*	

JUDGMENT ORDER

This cause came on to be heard before the Honorable Herschel P. Franks, Chancellor, upon the petition filed by complainants, the answer of defendant, the examination of witnesses in open court and upon the entire record; from all of which the Court found that the Zoning Resolution duly adopted by the Hamilton County Council establishing a Single Lot Mobile Home District was constitutional and a valid exercise of its police power.

(Clerk here copy memorandum opinion entered March 12, 1976 as a part of this Order.)

["IN THE CHANCERY COURT, PART 2,
FOR HAMILTON COUNTY, TENNESSEE
AT CHATTANOOGA

MOBILE HOME CITY OF CHATTANOOGA, INC., et als. *
*
-vs- * No. 49346
*
HAMILTON COUNTY, TENNESSEE *

MEMORANDUM OPINION

(Filed March 12, 1976)

This is a suit by several mobile home dealers, seeking a declaratory judgment on the constitutionality of a Zoning Resolution unanimously passed by the County Council of Hamilton County, Tennessee. The Zoning Resolution, in the record as Exhibit 2, amends Article II of the Hamilton County Zoning Regulations and defines "Mobile Home" and "Modular Unit." The Resolution, further, creates "Single Lots Mobile Home District," which is added to the thirteen zones heretofore established by the County. The Resolution, further, enumerates the land uses under the Single Lots Mobile Home District and establishes Height and Area Regulations, yard space and other general provisions. At issue is the requirement under the Resolution at 1403.6, which provides:

> "The minimum district size for any Single Lot Mobile Home District is five (5) acres."

Section 1403.2 sets forth the requirement:

> "The minimum building site area shall be 10,000 square feet for a one-family dwelling unit and 12,000 square feet for a two-family dwelling unit. The minimum frontage shall be 75 feet."

The Complaint attacks the enactment of the Resolution on several grounds,

[2]

among which it is asserted that it has violated the "Sunshine Law." At the trial of the case the complaints against the Ordinance were reduced to two, namely, that the Resolution enacted goes beyond the scope and authority under the enabling legislation for zoning found in *T. C. A. 13-401* et seq. and that the land requirements are unconstitutional within the meaning of the Federal and State Constitutions.

It should be noted that the plaintiffs' Statement of Facts is a misstatement of facts applicable to this Resolution. The plaintiffs contend in the Complaint that the Resolution has the effect of "Establishing a Single Lots Mobile Home District, providing that a single mobile home may be placed only on a lot which shall have not less than five (5) acres of land." The Resolution provides that a mobile home may be placed upon a lot within a Single Lots Mobile Home District with a minimum of 10,000 square feet. For example, a lot 100 feet by 100 feet would qualify for the placement of a mobile home within a District zoned as a Single Lots Mobile Home District.

The grant of zoning power found in *T. C. A. 13-401* has been properly transferred to the Hamilton County Council from the Quarterly Court. See *Ruckhart v. Schubert*, 451 S.W.2d 682. The statute granting zoning

power to the Council specifically sets forth the various regulations that may be made by the legislative body and "the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation or other purposes." The Court holds this to be a legislative function and not subject to judicial interference, unless the Resolution is unconstitutional. See *Davidson County v. Rogers*, 198 S.W.2d 812.

The regulation of mobile homes by Zoning Ordinance under the police power of the State is not open to question. The general law on this subject is set forth in *54 Am. Jur. 2d, Section 14*, at page 487, as follows:

> "As the number of trailers used for dwelling purposes has increased, ordinances and regulations controlling their use appear from the cases to have increased also, not only in number, but in severity as well. Where a case mentions the substitution of a new regulatory ordinance for an old one, it seems that the new one will usually be found to be much more restrictive than the older one. The most severe regulation, that of total prohibition from the area controlled by the lawmaking body, appears to be unconstitutional as an unreasonable exercise of the police power, and has so been held in the cases where it has been considered. However, certain forms of regulation, which in fact and as

a practical matter do achieve total or near-total prohibition, have been upheld as within the police power. Zoning provisions or building regulations which bar the use of trailers for residential purposes from certain areas, particularly from residential

> areas, have been held valid on the ground that they bear a reasonable relationship to the protection of public health, safety, and morals."

It should be noted at this juncture that Hamilton County has heretofore provided zoning for mobile home districts. See Hamilton County Zoning Regulations, Article IV, Section 500, and Article VII, Section 106.462. The Resolution under consideration is technically a liberalization of land use for mobile homes.[1] Arguments raised by the plaintiffs about the cost of obtaining rezoning for mobile homes, the requirement of five acres for mobile home districts and other related matters are properly addressed to legislative bodies and are not legal issues, and the Court cannot substitute its judgment for that of the County Council. The Court holds that the Zoning Resolution is a reasonable exercise of the police power of Hamilton County and is constitutional. The Court must observe, however, that, had the Resolution required what plaintiffs contend in their pleadings, that is, the requirement of five acres for a single mobile home lot, then the Resolution would have been clearly unreasonable.

Solicitors for the defendant shall submit a Decree in accordance with this Memorandum, declaring the Zoning Resolution under attack to be constitutional and dismissing plaintiffs' Complaint at their cost.

/s/ HERSCHEL P. FRANKS
Chancellor - Part 2

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[1] In practice, permits for trailers have been heretofore issued under the zoning classification of single family dwellings."]

It is, therefore, ORDERED, ADJUDGED and DECREED that the Hamilton County Resolution adopted by the Hamilton County Council on May 21, 1975, providing for the creation of a Single Lot Mobile Home District, is constitutional and a valid exercise of its police powers.

It is further ORDERED, ADJUDGED and DECREED that this cause be and hereby is in all respects dismissed, and the costs are taxed against the complainants for which execution may issue if necessary.

To said action of the Court the complainants duly excepted and here and now except and pray for an appeal to the next term of the Court of Appeals sitting at Knoxville; which appeal is granted upon the complainants' filing a timely appeal bond and otherwise perfecting their appeal in accordance with Tennessee statutes and rules relating thereto. The restraining order granted in this cause shall remain in force pending appeal upon the plaintiffs giving bond in the amount of $5,000 in accordance with R.C.P. 62.

[2]

ENTER this 12 day of April, 1976.

/s/ HERSCHEL P. FRANKS
CHANCELLOR, PART 2

APPROVED FOR ENTRY:

/s/ Herbert T. thornbury
J. TROY WOLFE, JR.
Solicitor for Complainants

/s/ J. F. Turner
JAMES F. TURNER, Solicitor
for Hamilton County

CHAMBLISS, BAHNER, CRUTCHFIELD, GASTON & IRVINE

By: /s/
Solicitors for Intervenors

THEREUPON, COURT ADJOURNED UNTIL TOMORROW MORNING, APRIL 13, 1976 AT 9:00 O'CLOCK, A. M.

/s/ HERSCHEL P. FRANKS
CHANCELLOR - PART II

APPENDIX B

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

MOBILE HOME CITY OF CHATTANOOGA, et al.	)	FROM THE CHANCERY COURT FOR HAMILTON COUNTY
Appellants	)	HON. HERSCHEL P. FRANKS, CHANCELLOR
v.	)	
HAMILTON COUNTY, TENNESSEE	)	
Appellee	)	AFFIRMED

J. TROY WOLFE, JR. and HERBERT A. THORNBURY OF CHATTANOOGA FOR APPELLANTS

JAMES F. TURNER and MICHAEL J. MAHN OF CHATTANOOGA FOR APPELLEE

OPINION

(Filed October 22, 1976)

Goddard, J.

Mobile Home City of Chattanooga, Inc. and others, most of whom are mobile home dealers, Plaintiffs-Appellants, filed a suit for declaratory judgment in the Chancery Court for Hamilton County against Hamilton County, Defendant-Appellee. Plaintiffs contend that a

recently adopted resolution amending the zoning regulations of Hamilton County violated the provisions of both the Federal and State Constitutions. The Chancellor found the ordinance constitutionally permissible and entered an order dismissing the complaint, from which the Plaintiffs have duly perfected their appeal.

[2]

The amendment in question establishes single-unit mobile home districts, prescribes their minimum size, as well as the minimum frontage and area for building sites within the district. The Plaintiffs' principal objection is directed to that provision which provides that such districts shall not be smaller than five acres.

In this regard, it is the Plaintiffs' main position, as we understand it, that the ordinance bears no relation to the health, morals or safety of the community, and because it was adopted purely for esthetic purposes, may not be sustained. In *City of Norris v. Bradford*, 204 Tenn. 319, 321 S.W.2d 543 (1958), the Supreme Court dealt with an ordinance which prohibited fences along the front line of property, although permitting them, if their height did not exceed six feet, along the sides and rear lot lines. In striking down the ordinance as unconstitutional, the Supreme Court said (204 Tenn. at 325; 321 S.W.2d at 546):

> The police power inherent in the sovereign is born of necessity for the protection and advancement of the public safety, health, morals and natural well being of its people. If a given exercise of such power in forbidding a natural use of one's realty fails to accomplish that result, then the proposed exercise thereof is of no validity. Under practically

all the authorities there falls within this invalid class those provisions of a zoning ordinance which accomplishes a result which is solely esthetic.

Conversely, when a zoning ordinance bears a reasonable relation to the public health, safety or morals, it must be sustained as a valid exercise of police power. *Davidson County v. Rogers*, 184 Tenn. 327, 331, 198 S.W.2d 812, 814 (1947), discusses the question at some length, as well as defines the meaning of the word "reasonable" as used in this context:

> The defendants recognize that the exercise of the police power in furtherance of zoning restrictions has been validated repeatedly by former decisions of this Court, and they do not assail the Act of 1939, nor the general resolution passed in 1940. But they insist that the Resolution of April 1945 was arbitrary, unreasonable and unconstitutional.

Before considering the defendants' contentions, the very limited scope of judicial review must be kept in mind lest this Court in error, substitute its judgment for that of the Legislature. "It is said that the courts have the right to determine whether such law is reasonable. By this expression, however, it is not meant that they have power to pass upon the act with a view to determining whether it was dictated by a wise or a foolish policy, or whether it will ultimately redound to the public good, or whether it is contrary to natural justice and equity. These are considerations solely for the Legislature. In determining whether such act is reasonable the courts decide merely whether it has any real tendency

to carry into effect the purposes designed—that is, the protection of the public safety, the public health, or the public morals—and whether that is really the end had in view, and whether the interests of the public generally, as distinguished from those of a particular class, require such interference, and whether the act in question violates any provision of the state or federal Constitution." *Motlow v. State*, 125 Tenn. 547, 589, 590, 145 S.W. 177, 188, L.R.A. 1916F, 177.

We have said that when a Quarterly County Court is acting in its legislative capacity in matters political and municipal in character, that there will be no judicial review unless the action is clearly unconstitutional. *Donnelly v. Fritts*, 159 Tenn. 605, 609, 21 S.W.2d 619; *Gamble v. Paine*, 141 Tenn. 548, 551, 552, 213 S.W. 419; *County Court of Obion v. Marr*, 27 Tenn. 634; *Carey v. Justices of Campbell County*, 37 Tenn. 515.

We may not say that such legislative action is "unreasonable" when it is taken in pursuance of a specific enabling Act, as here. *Rutherford v. City of Nashville*, 168 Tenn. 499, 508, 79 S.W.2d 581. That the passage of a zoning regulation such as the one before us, is a valid exercise of the police power, has long been settled in this State. *Spencer-Sturla Co. v. City of Memphis*, 155 Tenn. 70, 290 S.W. 608.

In the case of *Village of Euclid et al., v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 118, 71 L.Ed. 311, 54 A.L.R. 1016, which established the same rule for the United States, it was said:

"If the validity of the legislative classification for zoning purposes be *fairly debatable*, the legislative judgment must be allowed to control. *Radice v. People of State of New York*, 264 U.S. 292, 294, 44 S.Ct..325, 68 L.Ed. 690 [694]."

[4]

"One who assails classification made in a police measure must carry the burden of showing that it does not rest upon any reasonable basis, but that such classification is essentially arbitrary. *Thomas v. State*, 136 Tenn. 47, 188 S.W. 617; *City of Memphis v. State ex rel.*, 133 Tenn. 83, 179 S.W. 631, L.R.A. 1916B, 1151, Ann. Cas. 1917C, 1056; *Motlow v. State*, 125 Tenn. 547, 145 S.W. 177, L.R.A. 1916F, 177.

"If any possible reason can be conceived to justify such classification, it will be upheld and deemed reasonable. Peters v. O'Brien, 152 Tenn. 466, 278 S.W. 660; *Hunter v. Conner*, 152 Tenn. 258, 277 S.W. 71; *Caldwell & Co. v. Lea*, 152 Tenn. 48, 272 S.W. 715; *Bank of Commerce & Trust Co. v. Senter*, 149 Tenn. 569, 260 S.W. 144; *Ogilvie v. Hailey*, 141 Tenn. 392, 210 S.W. 645." *Darnell v. Shapard*, 156 Tenn. 544, 553, 3 S.W.2d 661, 663. (Italics ours.)

If the reasonableness of the legislative classification be "fairly debatable," it must be upheld. *Foster v. Mayor of City of Beverly*, 315 Mass. 567, 53 N.E. 2d 693, 151 A.L.R. 737; *Simon v. Town of Needham*, 311 Mass. 560, 42 N.E.2d 516, 141 A.L.R. 688.

Neither the "motives" of the County Court (*Soukup v. Sell*, 171 Tenn. 437, 441, 104 S.W.2d 830; *Madison v. City of Maryville*, 173 Tenn. 489, 493, 121 S.W.2d 540), nor the methods (*Leonard v. Haynes*, 82 Tenn. 447; *Donnelly v. Fritts*, 159 Tenn. 605, 21 S.W.2d 619) are subject to our review.

Henry v. White, 194 Tenn. 192, 250 S.W.2d 70 (1952) and *Meador v. City of Nashville*, 188 Tenn. 441, 220 S.W.2d 876 (1949) are also in accord.

While it does not appear that an appellate court in this state has dealt with the precise question, the question has been considered in other states. The appellate courts of New York and Minnesota, in criminal cases involving statutes requiring trailers to be placed only in trailer parks, repelled a constitutional attack and found the statutes bore a reasonable relationship to the public good:

> In view of sewage, water supply, waste disposal and other problems connected with the maintenance of trailers, permitting them in trailer parks where these public services can be strictly supervised indeed bears a relationship to the public health and welfare.

People v. Clute, 263 N.Y.S.2d 826, 830 (1965).

[5]

Other jurisdictions which have dealt with this question have generally upheld zoning ordinances banning trailer homes from some districts if another area within the municipality is zoned as a trailer park. In other words, while trailer homes cannot be completely banned from a municipality, they may

be restricted to established trailer camps. Decisions of these jurisdictions are discussed extensively in Annotation, 96 A.L.R.2d 232, §5 . . . . By limiting trailer homes to designated parks, cities have found it easier to provide police and fire protection and to regulate health conditions, as well as to provide necessary services such as water, sewage, and lighting. See, Annotation, 96 A.L.R.2d 232, §2. For these reasons, Blaine's zoning ordinance relating to mobile homes does aid in the protection of the health, safety, and general welfare of the people and was a valid exercise of the police power.

State v. Larson, 195 N.W.2d 180, 184 (1972).

It is true as pointed out by Plaintiffs that the ordinance treats mobile homes differently from conventional residences. The fact of the matter is they are different, and because they are, a different treatment is warranted. We also recognize that this ordinance restricts landowners in the use of their property without compensating them. This however is not the test, because the same can be said of any zoning regulation.

Finally, we concur in the concluding remarks of the Chancellor's memorandum opinion:

> Arguments raised by the plaintiffs about the cost of obtaining rezoning for mobile homes, the requirement of five acres for mobile home districts and other related matters are properly addressed to legislative bodies and are not legal issues, and the Court cannot substitute its judgment for that of the County Council. The Court holds that the Zoning

> Resolution is a reasonable exercise of the police power of Hamilton County and is constitutional.

For the foregoing reasons the assignments of error are overruled and the Trial Court affirmed. The costs are taxed to the Plaintiffs and their sureties.

/s/ HOUSTON M. GODDARD
Houston M. Goddard, Judge

CONCUR:

/s/ JAMES W. PARROTT
James W. Parrott, P.J. (E.S.)

/s/ CLIFFORD E. SANDERS
Clifford E. Sanders, J.

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

MOBILE HOME CITY OF CHATTANOOGA, INC., ET AL., Petitioners,	)	
V.	)	Hamilton County Chancery
HAMILTON COUNTY, TENNESSEE, Respondent.	)	

ORDER

(Filed February 7, 1977)

Upon consideration of the petition for certiorari and reply thereto, briefs of counsel and the entire record, the Court is of the opinion that the petition for certiorari should be and the same is hereby denied at the cost of the Petitioners.

PER CURIAM

APPENDIX D

RESOLUTION

TITLE: A Resolution to establish a Single Lots Mobile Home District and to amend the Hamilton County, Tennessee Zoning Regulations to exclude Mobile Homes on individual lots in all other Zoning Districts.

WHEREAS, the County Council of Hamilton County, Tennessee, desires to establish this District with the intent to permit single family and duplex residential development on individual lots, including mobile homes on individual lots, provided in each case that they comply with height, density and area requirements as specified in Section 1400 of the Hamilton County Zoning Regulations, and with the purpose to permit and regulate compatible residential uses as defined in this Resolution, and for the purpose of excluding mobile homes on individual lots from all other Zoning Districts.

NOW THEREFORE, BE IT RESOLVED, by the County Council of Hamilton County, Tennessee; in Session Assembled: That the Zoning Regulations be amended as follows:

1. That Article II, Definitions, be amended by the addition of new Subsections 127 entitled *Mobile Home*, and 128.1 entitled *Modular Unit*, in the following words and figures:

127. "*Mobile Home*": Any vehicle used, or so constructed as to permit its being used as a conveyance upon the public streets or highways, and constructed in such

a manner as will permit occupancy thereof as a dwelling or sleeping place for one (1) or more persons, and designed for a long-term occupancy and to be moved

[2]

infrequently.

128.1 *Modular Unit*: (sectional or relocatable home): A factory-fabricated transportable building which does not meet the definition of mobile home in these regulations and is designed to be used by itself or to be incorporated with similar units at a building site into a single structure without chassis, carriage or hitch. The term is intended to apply to major assemblies and does not include prefabricated sub-elements which are to be incorporated into a structure at the site. Such units are designed as stationary construction for placement upon permanent foundation, to be connected to utilities and may consist of one or more components for purposes of these regulations, a modular unit can be considered to be a one-family dwelling.

2. That Article IV, Schedule of District Regulations, be amended as follows:

A. By striking from the first paragraph of Article III, Section 100. the words and figures "thirteen (13)" and substituting in lieu thereof the words and figures "fourteen (14)".

B. By striking the enumeration of zones in said Article III and substituting in lieu thereof the following list:

AGRICULTURAL DISTRICT
URBAN RESIDENTIAL DISTRICT
RURAL RESIDENTIAL DISTRICT

APARTMENT-TOWNHOUSE DISTRICT
MOBILE HOME DISTRICT
TOURIST COURT AND MOTEL DISTRICT
LOCAL BUSINESS DISTRICT
GENERAL BUSINESS DISTRICT

[3]

WHOLESALE AND LIGHT INDUSTRIAL DISTRICT
INDUSTRIAL DISTRICT
VALLEY ZONE DISTRICT
R-1 RESIDENTIAL DISTRICT
OFFICE DISTRICT
SINGLE LOTS MOBILE HOME DISTRICT

3. That Article IV, Section 100. Agricultural District Regulations, be amended by striking the words and figures of Section 101.12, "detached single-family dwellings" and substituting in lieu thereof the words and figures, "detached one-family dwellings, but not including mobile homes on individual lots".

4. That Article IV, Section 200. Urban Residential District Regulations, be amended by striking the words and figures of Section 201.13, "One and two family dwellings" and substituting in lieu thereof the words and figures "One and two family dwellings, but not including mobile homes on individual lots".

5. That Article IV, Section 1000. Industrial District Regulations, be amended by striking the words and figures of Section 1001.1 "any use not otherwise prohibited by law, except as provided in Article IV, Sections 1001.2 and 1001.3" and substituting in lieu thereof the words and figures, "any use not otherwise prohibited by law, but not including mobile homes on individual lots, and except as provided in Article IV, Sections 1001.2 and 1001.3".

6. That Article IV, Section 1200. R-1 Residential District Regulations, be amended by striking the words and figures of Section 1201.11, "Single-Family Dwellings" and substituting in lieu thereof, the words and figures "Single-Family Dwelling, but not including mobile homes on individual lots".

7. That Article IV, Section 1300. Office District, be amended by striking the words and figures of Section 1301.11, "Single-Family and two-family dwellings" and substituting in lieu thereof the words and figures "Single-Family and Two-Family Dwellings, but not including mobile homes on individual lots".

8. That Article VI, Section 101.1, Location, be amended to read as follows, "A PUD may be located in an R-1 RESIDENTIAL DISTRICT, URBAN RESIDENTIAL DISTRICT, RURAL RESIDENTIAL DISTRICT, and in the SINGLE LOTS MOBILE HOME DISTRICT, provided that the PUD Plan has been reviewed by the Chattanooga-Hamilton County Regional Planning Commission and recommended for approval or disapproved by the Chattanooga-Hamilton County Regional Planning Commission.

9. That Article VI, Section 100. Special Condition Permit, be amended by striking the words and figures of Section 101.21 "Single-Family Dwellings" and substituting in lieu thereof the words and figures "One-Family Dwellings, except that mobile homes are allowed only in Single Lots Mobile Home District PUD's".

10. That Article VI, Section 101.51 be amended to read as follows, "A PUD will be shown on the zoning map when the Final PUD Plan has been approved by the Planning Commission. A PUD may be located within an area zoned

RURAL RESIDENTIAL, URBAN RESIDENTIAL, R-1 RESIDENTIAL, or SINGLE LOTS MOBILE HOME

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DISTRICT, as delineated on the zoning maps of Hamilton County".

11. That Article VI, Section 103.3 be added to said regulations in the following words and figures, "The maximum number of dwellings units in a PUD to be located in an SINGLE LOTS MOBILE HOME DISTRICT shall be computed by multiplying the gross acreage to be developed by 7.0, excluding any area to be developed as a church or school.

12. That a new Section 1400, entitled SINGLE LOTS MOBILE DISTRICT, be added to said Regulations in the following words and figures:

Section 1400. Single Lots Mobile Home District.

1401. Purpose of the Zone.

The Single Lots Mobile Home District is established for the purpose of allowing single-family and duplex residential development on individual lots, including mobile homes on individual lots, provided in each case that they comply with height, density and area requirements as specified in Section 1400 of these Regulations, and with the purpose to permit and regulate compatible residential uses as defined in this regulation.

1402. Use Regulations.

1402.1 Principal Uses Permitted.

1402.11 One-family dwellings, including mobile

homes and modular units.

1402.12 Two-family dwellings.

1402.13 Schools.

1402-14 Parks, playgrounds, and community buildings.

1402.15 Golf courses, except driving ranges, miniature courses, and other similar commercial operations.

1402.16 Fire halls and other public buildings.

1402.17 Churches.

1402.18 Accessory uses and buildings.

1402.19 Day care homes.

1402.20 Kindergartens operated by governmental units or by religious organizations.

1402.21 Day care centers, except that such uses

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shall require a special permit under the terms of Article VII, 106.461 of these Regulations.

1402.22 Kindergartens, except those operated by governmental units or religious organizations; except that such uses shall require a special permit under the terms of Article VII, 106.461 of these Regulations.

1403. *Height and Area Regulations*:

1403.1 No buildings shall exceed two and one-half stories or 35 feet in height, except that a building may exceed these requirements provided that for every foot of additional height over 35 feet the building shall be set back one additional foot from all property lines.

1403.2 The minimum building site area shall be be 10,000 square feet for a one-family dwelling unit and 12,000 square feet for a two-family dwelling unit. The minimum frontage shall be 75 feet.

1403.3 There shall be a front yard of not less than 25 feet.

1403.4 There shall be a side yard on each side of the building of not less than 10 feet.

1403.5 There shall be a rear yard of not less than 25 feet.

1403.6 The minimum district size for any Single Lot Mobile Home District if five (5) acres.

1404. *Off-Street Parking Regulations*:

1404.1 Off-street parking shall be provided on the same lot as, or a lot adjacent to, the building, in accordance with the following requirements.

1404.11 One space for every dwelling unit.

1404.12 One space for every three seats in a main auditorium of churches, schools, and other public buildings.

1404.13 Parking space for all other uses shall be in the amount satisfactory to the County and approved by the County Engineer.

1405. *General Provisions*:

1405.1 All mobile homes shall be tied down in a manner meeting safety and performance requirements of any governmental

regulations covering tie-down and anchoring devices, as specified by the Hamilton County Inspection Dept.

1405.2 All accessory buildings to the principal building (whether attached or detached) shall be subject to the same permit procedures and other regulations pertaining to dwelling units.

1406. *Special Exceptions for Planned Unit Development*:

Flexibility in the arrangement of residential uses may be permitted by the County Council as special exceptions in any Single Lots Mobile Home District, provided that the minimum size of any tract of land sought to be used for the planned unit shall be ten (10) acres and that a desirable environment through the use of good design procedures is assured, allowing flexibility in individual yard requirements to provide for multi-family dwelling units, townhouses, two-family units, one-family units and mobile homes except that such use or uses shall require a Special Conditional Permit under the terms of ARTICLE VI of these Regulations.

BE IT FURTHER RESOLVED, THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.